

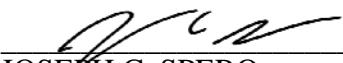
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, et al., No. C-07-2659 JCS  
Plaintiffs,  
v.  
CITY OF OAKLAND et al.,  
Defendants.

**COURT'S PROPOSED SPECIAL VERDICT FORM**

Dated: December 3, 2008

  
JOSEPH C. SPERO  
United States Magistrate Judge

1 **JURY VERDICT**

2 We, the jury, unanimously find as follows:

3 **I. Liability**

4 **A. First 42 U.S.C. § 1983 Claim – Freedom of Expression**

5 1. Do you find by a preponderance of the evidence that defendant Alcantar deprived  
6 plaintiff Ortega of his right to freedom of expression by detaining/arresting him?

7    Yes    No

8 If you answer yes, go to question 2. If you answer no, go to question 3.

9 2. Do you find by a preponderance of the evidence that defendant Alcantar's violation  
10 of plaintiff Ortega's right to freedom of expression by detaining/arresting him was a  
11 substantial factor in causing plaintiff's harm?

12    Yes    No

13 Go to question 3.

14 **B. Second 42 U.S.C. § 1983 Claim – False Arrest**

15 3. Do you find by a preponderance of the evidence that defendant Alcantar  
16 detained/arrested plaintiff Benjamin Ortega without probable cause?

17    Yes    No

18 If you answer yes, go to question 4. If you answer no, go to question 5.

19 4. Do you find by a preponderance of the evidence that the arrest/detention was a  
20 substantial factor in causing plaintiff's harm?

21    Yes    No

22 Go to question 5.

23 **C. Third 42 U.S.C. § 1983 Claim – Excessive Force**

24 5. Do you find by a preponderance of the evidence that defendant Alcantar used  
25 excessive force when he detained/arrested plaintiff Ortega?

26    Yes    No

27 If you answer yes, then go to question 6. If you answer no, go to question 7.

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1       6.     Do you find by a preponderance of the evidence that defendant Alcantar's use of  
2                   excessive force in detaining/arresting plaintiff Ortega was a substantial factor in  
3                   causing plaintiff's harm?

4      Yes  No

5     Go to question 7.

6     **D.     Assault**

7       7.     Do you find by a preponderance of the evidence that defendant Alcantar assaulted  
8                   plaintiff Ortega?

9      Yes  No

10    If you answer yes, go to question 8. If you answer no, go to question 9.

11    8.     Do you find by a preponderance of the evidence that defendant Alcantar's conduct  
12                   was a substantial factor in causing plaintiff Ortega's harm?

13     Yes  No

14    Go to question 9.

15    **E.     Battery By a Peace Officer**

16    9.     Do you find by a preponderance of the evidence that defendant Alcantar committed  
17                   battery upon plaintiff Ortega?

18     Yes  No

19    If you answer yes, go to question 10. If you answer no, go to question 11.

20    10.    Do you find by a preponderance of the evidence that defendant Alcantar's conduct  
21                   was a substantial factor in causing plaintiff Ortega's harm?

22     Yes  No

23    Go to question 11.

24    **F.     Violation of Bane Act – Cal. Civ. Code § 52.1**

25    11.    Do you find by a preponderance of the evidence that defendant Alcantar interfered  
26                   with plaintiff Ortega's civil rights by threatening to commit or committing violent  
27                   acts against plaintiff Ortega?

28     Yes  No

1 If you answer yes, go to question 12. If you answer no, go to question 13.

2 12. Do you find by a preponderance of the evidence that defendant Alcantar's conduct  
3 was a substantial factor in causing plaintiff Ortega's harm?

4  Yes  No

5 Go to question 13.

6 **G. Violation of Ralph Act – Cal. Civ. Code § 51.7**

7 13. Do you find by a preponderance of the evidence that defendant Alcantar threatened to  
8 commit or committed violent acts against plaintiff Ortega because of his national  
9 origin?

10  Yes  No

11 If you answer yes, go to question 14. If you answer no, go to question 15.

12 14. Do you find by a preponderance of the evidence that defendant Alcantar's conduct  
13 was a substantial factor in causing plaintiff Ortega's harm?

14  Yes  No

15 Go to question 15.

16 **H. Negligence**

17 15. Do you find by a preponderance of the evidence that defendant Alcantar was  
18 negligent?

19  Yes  No

20 If you answer yes, go to question 16. If you answer no, go to question 17.

21 16. Do you find by a preponderance of the evidence that defendant Alcantar's negligence  
22 was a substantial factor in causing plaintiff Ortega's harm?

23  Yes  No

24 Go to question 17.

25 **I. Intentional Infliction of Emotional Distress**

26 17. Do you find by a preponderance of the evidence that plaintiff Ortega wilfully  
27 committed conduct that caused plaintiff to suffer severe emotional distress?

28  Yes  No

1 If you answer yes, go to question 18. If you answer no, go to question 19.

2 18. Do you find by a preponderance of the evidence that defendant Alcantar's conduct  
3 was a substantial factor in causing plaintiff Ortega's harm?

4  Yes  No

5 Go to question 19.

6 **II. DAMAGES**

7 19. If you answered "yes" to questions 2, 4, 6, 8, 10, 12, 14, 16, or 18, what is the total  
8 amount of compensatory damages, if any, that should be awarded to plaintiff Ortega?

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10 Proceed to question 20.

11 20. Do you find by a preponderance of the evidence that defendant Alcantar's conduct  
12 was either malicious or committed in reckless disregard of plaintiff Ortega's rights?

13  Yes  No

14 If yes, proceed to question 21.

15 21. Do you award plaintiff Ortega punitive damages?

16  Yes  No

17 If yes, proceed to question 22.

18 22. What is the amount of punitive damages against defendant Alcantar?

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1 **SIGN AND DATE THE SPECIAL VERDICT FORM**

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3 **Signed:** \_\_\_\_\_

4

5 **Foreperson of the Jury:** \_\_\_\_\_

6

7 **Dated:** \_\_\_\_\_

8 After this Verdict Form has been signed and dated, please submit a Jury Note to the Court  
9 Security Officer notifying the Court that the Jury has reached a verdict. Please return the Verdict  
10 Form to the Courtroom Deputy.